

# EXHIBIT 2

## Assembly Memorandum

# MUNICIPALITY OF ANCHORAGE

## ASSEMBLY MEMORANDUM

No. AM 164-2021

Meeting Date: March 23,  
29021

1      **From:** ACTING MAYOR  
2

3      **Subject:** AN ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING  
4                  ANCHORAGE MUNICIPAL CODE TITLE 5, EQUAL RIGHTS, TO  
5                  UPDATE DEFINITIONS; ADD FAMILIAL STATUS AS A  
6                  PROTECTED CLASS UNDER THE HOUSING PROVISION; REPEAL  
7                  CHAPTER 5.25 FAIR HOUSING ACT; ADD NEW SECTIONS; AND  
8                  MAKE OTHER PROCEDURAL, STRUCTURAL, AND TECHNICAL  
9                  UPDATES.

10     Title 5 of the Anchorage Municipal Code is Anchorage's non-discrimination code  
11    and home to the Anchorage Equal Rights Commission (AERC). Title 5 contains  
12    substantive principles of law about what conduct constitutes unlawful discrimination  
13    in the MOA; it also sets forth the procedural rules and practices that the AERC uses  
14    in investigating and adjudicating claims of unlawful discrimination. Title 5 is in need  
15    of significant revision to update the substantive law, revise and clarify AERC  
16    procedures, and eliminate statutory relics and inconsistencies in the text.  
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18      **Background:**  
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20     The AERC enforces Anchorage Municipal Code section 5.20.020 – Unlawful  
21    practices in the sale, rental or use of real property, which prohibits housing  
22    discrimination based on race, color, sex, sexual orientation, gender identity,  
23    religion, national origin, marital status, age, or physical or mental disability. When  
24    a Complainant files a housing discrimination complaint with the AERC, this is the  
25    section of code relied upon by the AERC for jurisdiction and to determine unlawful  
26    practices.  
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28     In 2002, the AERC recommended to the Assembly adoption of Chapter 5.25 – Fair  
29    Housing Act. Adoption of this chapter was required for a workshare agreement  
30    between the AERC and the U.S. Department of Housing and Urban Development  
31    (HUD), similar to AERC's workshare agreement with the Equal Employment  
32    Opportunity Commission (EEOC). In Assembly Memorandum 956-2002, the AERC  
33    explains that Chapter 5.25 provided a new protected class in housing discrimination  
34    cases – familial status – and incorporated the substantive provisions and  
35    protections of Title VIII of the Civil Rights Act of 1968, commonly known as the Fair  
36    Housing Act (42 USC 3601, et seq.). Based on historical information currently  
37    available to the AERC, the aforementioned workshare agreement between the  
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1 AERC and HUD never materialized. Nonetheless, Chapter 5.25 remains in Title 5.  
2

3 Chapter 5.25 includes nine different categories of exceptions in its “lawful practices”  
4 section and these exceptions are currently incorporated into Section 5.20.020 by  
5 reference. Included in the exceptions is shelters for the homeless. Plaintiffs in  
6 *Downtown Soup Kitchen v. MOA et al.* argued that the homeless shelter exception  
7 in the housing provision of title 5 should apply to the public accommodation  
8 provision as well. In an August 9, 2019 Order granting a preliminary injunction, the  
9 United States District Court for the District of Alaska found that Downtown Soup  
10 Kitchen was likely to prevail in this argument. See *Downtown Soup Kitchen v. MOA*  
11 *et al.*, Case No. 3:18-cv-00190-SLG.

12 The changes proposed below address legal issues raised by the *Downtown Soup*  
13 *Kitchen* litigation, which resulted in a \$100,001 settlement paid by the Municipality.  
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15 **Proposal:**

16 The AERC recommends:  
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- 20 1. Removing chapter 5.25 from Title 5, as it is not a chapter that is cited or  
21 relied on by the AERC when writing complaints or conducting investigations;
- 23 2. Adding *familial status* to the protected classes under section 5.20.020, since  
24 removing chapter 5.25 will remove that protected class;
- 26 3. Updating the *public accommodation* definition to include, in part, an  
27 organization that accepts public funds; and
- 29 4. Balancing the powers of the executive director to provide more oversight and  
30 supervision by the nine-member commission, including requiring approval  
31 by a panel of 3 commissioners for director's charges and general  
32 investigations (complaints initiated by the executive director instead of a  
33 member of the public);

34 The AERC began reviewing title 5 in the summer of 2019 for the above changes,  
35 and in that process discovered several other areas in need of updating. These  
36 include:  
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- 39 a. Clarifying or modernizing definitions (commission, employer, gender  
40 identity, marital status, national origin, staff, substantial evidence) and  
41 adding definitions for terms used in title 5 but not previously defined  
42 (accusation, complaint);
- 44 b. Further detailing conciliation procedures and providing for two-party  
45 conciliations between respondent and the AERC in order to achieve public  
46 policy relief when complainants have either become unavailable or refuse to  
47 conciliate after a reasonable offer (instead of simply dismissing these without  
48 achieving any public policy relief);

- c. Detailing hearing procedures and allowing for discretion in whether to proceed to hearing with a given case in light of all the circumstances (for example, an unavailable complainant, a complainant who prefers a different forum with a wider array of remedies, legal strategy relating to admissible evidence and standard of proof differences at the hearing stage, overall best use of resources); and
  - d. Other minor procedural and technical changes.

The AERC has worked closely with the Municipality's Legal Department in drafting these changes and has also consulted with the Disability Law Center for pertinent sections.

There are no economic effects to this ordinance and therefore, pursuant to AMC 2.30.053B.1., no Summary of Economic Effects is attached to this ordinance.

## **THE ADMINISTRATION RECOMMENDS APPROVAL.**

Prepared by: Anchorage Equal Rights Commission  
Approved by: Mitzi Bolaños Anderson, Executive Director,  
Anchorage Equal Rights Commission  
Concur: Kathryn R. Vogel, Municipal Attorney  
Concur: Anna C. Henderson, Municipal Manager  
Respectfully submitted: Austin Quinn-Davidson, Acting Mayor

**Attachment A:**  
**Anchorage Municipal Code Chapter 5.25 – Fair Housing Act**